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**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Joseph G. Milstein, M.D.
19515 Greenbriar Drive
Tarzana, California 91354

Physician and Surgeon's Certificate No. C20854

Respondent.

Case No. 09-1998-85050

OAH No.

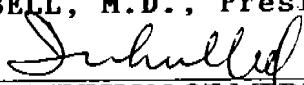
DECISION AND ORDER

The attached Stipulated Surrender of License is hereby adopted by the Division of Medical Quality, Medical Board of California of the Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on October 31, 2000 at 5:00 p.m.

It is so ORDERED October 24, 2000.

IRA LUBELL, M.D., President



FOR THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 MARK T. ROOHK, State Bar No. 132698
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

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8 **BEFORE THE**
DIVISION OF MEDICAL QUALITY
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 09-1998-85050

12 JOSEPH G. MILSTEIN, M.D.
13 19515 Greenbriar Drive
Tarzana, California 91354

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 Physician and Surgeon's Certificate No. C20854

15 Respondent.
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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Complainant Ron Joseph is the Executive Director of the Medical Board
22 of California. He brought this action solely in his official capacity and is represented in this
23 matter by Bill Lockyer, Attorney General of the State of California, by Mark T. Roohk, Deputy
24 Attorney General.

25 2. Respondent is representing himself in this proceeding and has chosen not
26 to exercise his right to be represented by counsel.

27 3. On or about July 23, 1959, the Medical Board of California issued
28 Physician and Surgeon's Certificate Number C20854 to Joseph G. Milstein, M.D.

1 ("Respondent"). The Physician and Surgeon's Certificate was in full force and effect at all times
2 relevant to the charges brought herein and will expire on February 28, 2001, unless renewed.

3 JURISDICTION

4 4. Accusation number 09-1998-85050, was filed before the Division of
5 Medical Quality, Medical Board of California of the Department of Consumer Affairs,
6 ("Division"), and is currently pending against Respondent. The Accusation, together with all
7 other statutorily required documents, was duly served on Respondent on September 6, 2000, and
8 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
9 Number 09-1998-85050 is attached as Exhibit A and incorporated herein by reference.

10 ADVISEMENT AND WAIVERS

11 5. Respondent has carefully read and fully understands the nature of the
12 charges and allegation in the Accusation, Number 09-1998-85050. Respondent also has read and
13 carefully considered the Stipulated Surrender of License and understands the effect it will have
14 on his ability to practice.

15 6. Respondent is fully aware of his legal rights in this matter, including the
16 right to a hearing on the charges and allegations in the Accusation, the right to be represented by
17 counsel, at his own expense, the right to confront and cross-examine the witnesses against him,
18 the right to present evidence and to testify on his own behalf and to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents, the right to reconsideration
20 and court review of an adverse decision, and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly and intelligently waives and gives up
23 each and every right set forth above.

24 CULPABILITY

25 8. Respondent understands that the charges and allegations in the
26 Accusation, if proven at a hearing, constitute cause for imposing discipline upon his Physician
27 and Surgeon's Certificate.

1 9. For the purpose of resolving Accusation number 09-1998-85050 without
2 the expense and uncertainty of further proceedings, Respondent hereby gives up his right to
3 contest that cause for discipline exists based on those charges and hereby surrenders his
4 Physician and Surgeon's Certificate Number C20854 for the Division's formal acceptance.

5 EFFECT OF SURRENDER

6 10. Respondent understands that by signing this stipulation he enables the
7 Division to issue its order accepting the surrender of his Physician and Surgeon's Certificate
8 without further process.

9 11. Upon acceptance of the stipulation by the Division, Respondent
10 understands that he will no longer be permitted to practice as physician and surgeon in
11 California, and also agrees to surrender and cause to be delivered to the Division both his license
12 and wallet certificate before the effective date of the decision.

13 12. Respondent fully understands and agrees that if he ever files an application
14 for relicensure or reinstatement in the State of California, the Division shall treat it as a petition
15 for reinstatement. Respondent must comply with all the laws, regulations and procedures for
16 reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges
17 and allegations contained in the Accusation number 09-1998-85050 will be deemed to be true,
18 correct and admitted by Respondent when the Division determines whether to grant or deny the
19 petition.

20 RESERVATION

21 13. The admissions made by Respondent herein are only for the purposes of
22 this proceeding, or any other proceedings in which the Division of Medical Quality, Medical
23 Board of California or other professional licensing agency is involved, and shall not be
24 admissible in any other criminal or civil proceeding.

25 CONTINGENCY

26 14. This stipulation shall be subject to the approval of the Division.
27 Respondent understands and agrees that Medical Board of California's staff and counsel for
28 complainant may communicate directly with the Division regarding this stipulation and

1 settlement, without notice to or participation by Respondent. If the Division fails to adopt this
2 stipulation as its Order, the Stipulation for Surrender of License Order shall be of no force or
3 effect, it shall be inadmissible in any legal action between the parties, and the Division shall not
4 be disqualified from further action in this matter by virtue of its consideration of this stipulation.

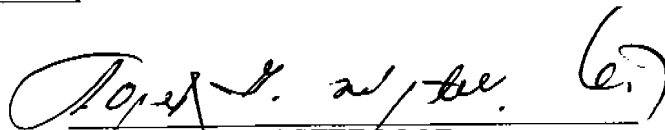
5 15. The parties agree that facsimile copies to this Stipulated Surrender of
6 License and Order, including facsimile signatures thereto, shall have the same force and effect as
7 original Stipulated Settlement and Disciplinary Order and signatures.

8 ACCEPTANCE

9 I, Joseph G. Milstein, M.D., having carefully read the above Stipulated Surrender
10 of License and entered into this agreement freely and voluntarily, and with full knowledge of its
11 force and effect, do hereby surrender my Physician and Surgeon's Certificate to the Division of
12 Medical Quality, Medical Board of California for its formal acceptance. By signing this
13 Stipulated Surrender of License I recognize that upon its formal acceptance by the Division I will
14 lose all rights and privileges to practice as a physician and surgeon in the State of California and
15 I will also cause to be delivered to the Division both my license and wallet certificate before the
16 effective date of the decision.

17 I further agree that a facsimile copy of this Stipulated Surrender of License and
18 Order including facsimile copies of signatures, may be used with the same force and effect as the
19 originals.

20 DATED: 9-26-00

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22 JOSEPH G. MILSTEIN, M.D.
23 Respondent
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ENDORSEMENT

The foregoing Stipulated Surrender of License is hereby respectfully submitted
for consideration by the Division of Medical Quality, Medical Board of California of the
Department of Consumer Affairs.

DATED: 10/3/00

BILL LOCKYER, Attorney General
of the State of California



MARK T. ROOHK
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number: 03573160-LA2000AD1655
Stipulation for surrender.wpt 8/8/00

Exhibit A:
Accusation, Case No. 09-1998-85050

1 BILL LOCKYER, Attorney General
of the State of California
2 MARK T. ROOHK, State Bar No. 132698
Deputy Attorney General
3 California Department of Justice
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 897-2568
5 Facsimile: (213) 897-1071

6 Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 20 2000
BY Ronald S. Mather

8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 09-1998-85050

14 JOSEPH G. MILSTEIN, M.D.
15 19515 Greenbriar Drive
16 Tarzana, California 91354

ACCUSATION

17 Physician and Surgeon's Certificate No. C20854

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. Ron Joseph ("Complainant") brings this Accusation solely in his official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs.

23 2. On or about July 23, 1959, the Medical Board of California issued
24 Physician and Surgeon's Certificate ("License") Number C20854 to Joseph G. Milstein, M.D.
25 ("Respondent"). On or about February 26, 1997, by respondent's request, the License was placed
26 on Retired Status, and the License Number changed to CFE20854. The License was in full force
27 and effect at all times relevant to the charges brought herein and will expire on February 28,
28 2001, unless renewed.

JURISDICTION

3. This Accusation is brought before the Division of Medical Quality, Medical Board of California ("Division"), under the authority of the following sections of the Business and Professions Code ("Code").

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code states that the Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

...

6. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 14124.12 of the Welfare and Institutions Code states:

(a) Upon receipt of written notice from the Medical Board of California, the Osteopathic Medical Board of California, or the Board of Dental Examiners of California,

1 that a licensee's license has been placed on probation as a result of a disciplinary action,
2 the department may not reimburse any Medi-Cal claim for the type of surgical service or
3 invasive procedure that gave rise to the probation, including any dental surgery or
4 invasive procedure, that was performed by the licensee on or after the effective date of
5 probation and until the termination of all probationary terms and conditions or until the
6 probationary period has ended, whichever occurs first. This section shall apply except in
7 any case in which the relevant licensing board determines that compelling circumstances
8 warrant the continued reimbursement during the probationary period of any Medi-Cal
9 claim, including any claim for dental services, as so described. In such a case, the
10 department shall continue to reimburse the licensee for all procedures, except for those
11 invasive or surgical procedures for which the licensee was placed on probation.

12 13 FIRST CAUSE FOR DISCIPLINE

14 (Gross Negligence)

15 8. Respondent is subject to disciplinary action under section 2234,
16 subdivision (b) of the Code in that he has committed an act or acts of gross negligence during his
17 care and treatment of a patient. The circumstances are as follows:

18 A. Patient S.S. first presented to respondent for pre-natal care on or
19 about June 9, 1993. At that time, she was in approximately the sixth month of her
20 pregnancy, and due to deliver in late September, 1993. Her progress from the time of her
21 first visit to respondent was essentially unremarkable, except that as her due date
22 approached, it became more and more unlikely that the infant would be delivered
23 vaginally due to numerous physiological factors, and as such she, her husband, and
24 respondent discussed that a caesarean section probably would be necessary.

25 B. In or about the early morning of September 9, 1993, S.S. called
26 respondent and informed him that she had been experiencing discharge of small amounts
27 of amniotic fluid over the previous 72 hours, that the discharge had greatly increased that
28 morning, and in addition she was now experiencing possible contractions. Respondent

1 immediately admitted her to the hospital, where it was confirmed that her "water" had
2 indeed "broken." Respondent's examination also noted an unripe cervix (no dilation) and
3 floating vertex (the fetus was positioned very high up). She was observed for several
4 hours with no change in either cervical status or fetal descent. Respondent made the
5 diagnosis of cephalopelvic disproportion, and scheduled S.S. for immediate caesarean
6 section.

7 C. Respondent performed the caesarean section the same day, with the
8 assistance of a second year OB-GYN resident at the Cedars-Sinai Hospital. Early in the
9 procedure, the resident performed a superficial "scoring" (cutting) of the uterine wall
10 using a scalpel. At that time large amounts of blood were encountered from and
11 consequently obscured the incision site; the large amounts were most likely due to the
12 lower uterine segment being thicker and more undeveloped than normal because of the
13 lack of progress in labor. Attempts were made by both respondent and the resident to
14 control the bleeding, with little positive effect. Respondent then attempted to deepen and
15 widen the incision using the repeated placement and spreading of a curved Kelly clamp,
16 which applied pressure to the area in and around the site. Eventually respondent used his
17 finger to enter the uterine cavity, which was coincidental with the two physicians noting a
18 "gush" of amniotic fluid from the site. Respondent and/or the resident then extended the
19 incision a few centimeters on either side using bandage scissors, which resulted in a fairly
20 easy delivery of the infant, head first and face up, through the site.

21 D. Upon delivery of the infant, it was noted that he had a laceration
22 "around 2-3 [centimeters] in length...in the right parietal region." Pediatricians were
23 called and the infant was transported to neonatal intensive care, where a diagnosis of a
24 fractured skull was made and emergency surgery was performed. As a result, the infant
25 suffered brain damage and the loss of one hemisphere.

26 E. Respondent has subjected his license to discipline in that he
27 applied too much pressure while using the Kelly clamp to gain access to the uterine
28 cavity, without protecting the infant's head, despite being clearly aware of the difficulties

1 in visualizing what he was doing due to the excessive bleeding, and despite the possibility
2 that, in attempting to control that bleeding, the infant's head may have been shifted to a
3 position directly under the incision site, which would have limited the release of amniotic
4 fluid from that site, as well as respondent's ability to determine whether in fact he had
5 already entered the uterine cavity.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Incompetence)

9 9. Respondent is subject to disciplinary action under section 2234,
10 subdivision (d), of the Code in that he has committed an act or acts of incompetence during his
11 care and treatment of a patient. The circumstances are as follows:

12 A. Paragraph 8, subparagraphs (A)-(E), inclusive, are incorporated by
13 reference as if set forth in full at this point.
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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 4 1. Revoking or suspending Physician and Surgeon's Certificate Number
5 C20854, issued to Joseph G. Milstein, M.D.;
- 6 2. Revoking, suspending or denying approval of Joseph G. Milstein, M.D.'s
7 authority to supervise physician's assistants, pursuant to section 3527 of the Code;
- 8 3. Ordering Joseph G. Milstein, M.D. to pay the Division of Medical Quality
9 the reasonable costs of the investigation and enforcement of this case, and, if placed on
10 probation, the costs of probation monitoring;
- 11 4. Taking such other and further action as deemed necessary and proper.

12 DATED: September 6, 2000.

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14 

15 RON JOSEPH
16 Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
State of California
Complainant

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20 2Accusation.wpt 8/8/00
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